

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Complaint on Sunday  
and Holiday Collections

Docket No. C2001-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO  
ORDER NO. 1307, AND MOTION FOR RECONSIDERATION  
(April 10, 2001)

Order No. 1307 was issued on March 20, 2001. It granted in part and denied in part the Postal Service's motion to dismiss. It also allowed the complainant until April 3rd to provide additional information and, if desired, to amend the complaint. Mr. Carlson's responsive pleadings were filed on March 29, 2001. Order No. 1307 set April 10th as the date for other parties to respond, and the Postal Service hereby does.

Lack of Jurisdiction

The Postal Service's participation in a section 3662 service complaint case should necessarily be preceded by a clear articulation of a legitimate jurisdictional basis for the proceeding. In this proceeding, no such basis has been clearly articulated, either by the complainant or the Commission.

The relevant portion of section 3662 would not seem particularly difficult to apply:

Interested parties ... who believe that they are not receiving postal services in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission ... . The Commission may in its discretion hold hearings on such complaint.

39 U.S.C. § 3662. Two points of interest are readily apparent. First, the focus is on the characteristics of the service received by the complaining party. Second, the

complainant must "believe" that the service received is not in accordance with the policies of title 39. The jurisdictional prerequisite to a section 3662 service complaint case is therefore a complainant who alleges a belief that the services received are not in accordance with the policies of the Act.

In his original complaint in this docket, Mr. Carlson identified certain policies of the Act, but he did not allege a belief that the services he is receiving are not in accord with those policies.<sup>1</sup> Instead, he alleged that the services he is receiving, with respect to Sundays and with respect to holidays, are not in compliance with the provisions of the POM. Furthermore, he alleged that the Postal Service had implemented a change in the nature of both Sunday and holiday services without requesting an advisory opinion from the Commission pursuant to section 3661(b) of the Act. In response to the Postal Service's motion to dismiss, Mr. Carlson made clear his reliance on these four sets of allegations as the basis for his complaint. Answer in Opposition to Postal Service Motion to Dismiss (December 14, 2000) at 4-5.

In Order No. 1307, the Commission declined to entertain proceedings on three of these four grounds. First, the Commission agreed with the Postal Service that there would be no practical benefit from addressing either aspect of Sunday service (i.e., the

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<sup>1</sup> The complaint in Paragraph 3 identifies one potentially relevant policy of the Act – the provision of section 403(b) stating the Postal Service's responsibility "to maintain an efficient system of collection ... ." Sections of the Act arguably containing other potentially relevant policies – sections 404(1) (specific power to "provide for the collection, handling, ... of mail") and 3661(a) ("Postal Service shall develop and promote adequate and efficient postal services") – are likewise identified in Paragraphs 2 and 6 of the Complaint. The Complaint as filed, however, never actually alleges that the service complainant is receiving is not in accord with any of sections 403(b), 404(1), or 3661(a).

alleged failure to comply with POM, the alleged failure to seek an advisory opinion), given the amount of time which has elapsed since the identified change in Sunday service. Order No. 1307 at 14. Next, the Commission declined to address alleged discrepancies between actual holiday service and the provisions of the POM. *Id.* at 14-15. Consequently, as stated by the Commission, "[w]hat remains of the instant complaint are the holiday and holiday eve service issues based on the Postal Service's alleged failure to seek an advisory opinion as required by § 3661(b)." *Id.* at 15.

The issue of whether or not the Postal Service failed to seek a required advisory opinion, however, does not fall within the range of issues which the Commission is authorized to address in a section 3662 service complaint proceeding. The obligation to seek an advisory opinion arises not from a policy of the Act, but rather, as the Commission itself acknowledges (Order No. 1307 at 9), from a "procedural provision of the Act." Moreover, by the terms of section 3662, the focus of a service complaint case is on the level of service received by the complainant. Issues regarding whether appropriate procedures have been invoked to afford complainant a particular level of service are entirely distinct from issues regarding whether that level of service is in accordance with the policies of the Act. Inappropriate procedures may nonetheless lead to adequate service, and, conversely, fully appropriate procedures could still produce inadequate levels of service. Section 3662, however, empowers the Commission to explore only issues of the adequacy of the level of service, to be evaluated in light of the policies of the Act. Therefore, the Commission lacks jurisdiction to proceed exclusively on the issue which the Commission has itself described as all that remains of the instant complaint.

Stating the same conclusion somewhat differently, section 3662 cannot be used as a back-door route to enable entities other than the Postal Service to initiate section 3661(b) service change proceedings. Under the clear provisions of section 3661, it is the Postal Service, and only the Postal Service, that has been granted the authority to initiate a section 3661(b) proceeding. Under the position espoused by Mr. Carlson and apparently adopted by the Commission, however, private party complainants can in effect initiate hearings under section 3661 by filing a complaint under section 3662 which alleges that the Postal Service should have requested an advisory opinion under section 3661(b). Acquiescing to such a manipulation of the statutory scheme would deprive the Postal Service of its exclusive authority to determine when it is necessary to seek an advisory opinion on a nationwide change in service, and could result in unnecessary, costly, and time consuming administrative proceedings.<sup>2</sup>

As noted in the Postal Service's December 22nd Reply to Mr. Carlson's Opposition to the Motion to Dismiss, if he believes that the Postal Service has changed service levels without complying with applicable procedures, it would appear that he

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<sup>2</sup> There is another important distinction between sections 3661(b) and 3662 that appears to be getting lost in the shuffle here. By their very nature, proceedings under section 3661(b) present nationwide issues, and therefore can potentially encompass activities across a wide range of spectrums. Under section 3662, however, the focus is on the services being received by the complainant -- presenting a potentially much more narrow range of issues. Thus, it makes little sense for a complainant under section 3662 to be contemplating discovery for the purpose of finding out the characteristics of the service about which he is ostensibly complaining. Yet according to his filings on March 29th, that appears to be exactly what Mr. Carlson is contemplating. This underscores the Postal Service's concern that what Mr. Carlson actually intends under the guise of section 3662 is the initiation of what amounts to a section 3661(b) proceeding. This is a result which the Postal Service submits should not be countenanced, because it is so clearly at odds with the existing statutory scheme.

has two available options. As one option, if he wants to focus his challenge on alleged procedural irregularities, he would need to find a forum with jurisdiction over challenges that the Postal Service has acted unlawfully by failing to follow applicable procedures. Alternatively, as a second option, if he wants to focus on substance and file a section 3662 complaint with the Commission, he would need to allege a belief that the existing service fails to comply with the policies of the Act. In this instance, Mr. Carlson has done neither.

The Postal Service is troubled by the statement at page 17 of Order No. 1307 that the Commission “does not contemplate consideration at this time of whether the level of holiday and holiday eve service is adequate under § 3661(a).” Section 3661(a), directing the Postal Service to “develop and promote adequate and efficient postal services,” would appear to present a policy of the Act of the type which an alleged failure to provide services in accordance with could arguably constitute a viable basis for jurisdiction under section 3662. While section 3661(a) is perhaps not the only statement of potentially relevant policy – as noted above, policies established within sections 403 and 404 (as well as 101) could also be germane in this regard – it is the only one specifically mentioned by the Commission in Order No. 1307.

By affirmatively (if provisionally) precluding consideration of adequacy under section 3661(a), however, the Commission appears to be rejecting what the Postal Service views as the Commission’s only identified opportunity to meet the jurisdictional prerequisite that a complaint allege a belief that service levels are not in accord with the policies of the Act. As conceded in the sentence in Order No. 1307 which follows the above-quoted one, “Carlson has not made a specific allegation that [holiday and holiday

eve] service levels are not adequate." The legal conclusion which follows logically from this observation is that Mr. Carlson has failed to state a claim upon which relief may be granted, and that the Commission lacks jurisdiction under the terms of section 3662 to proceed. On that basis, the Postal Service has from its very earliest pleading moved to have the complaint dismissed.

The Commission on page 17 of Order No. 1307 did give Mr. Carlson the opportunity to modify his complaint in order to allow him to close the gap and allege a belief that holiday service is inadequate and, thus, not in accordance with the policy stated in section 3661(a). Mr. Carlson, however, has failed to grasp this opportunity sufficiently to advance his cause. In paragraphs 20 and 34 of his amended complaint, filed March 29, 2001, Mr. Carlson merely states that holiday service "*may* not be adequate within the meaning of 39 U.S.C. § 3661(a)" (emphasis added). His complaint still fails to meet the terms of section 3662, which requires complainants "who believe that they are not receiving postal services in accordance with the policies" of title 39. Mr. Carlson apparently has no such belief, since he is unwilling to go any further than an indecisive statement that the service in question "*may*" not comply with the Act. Because Mr. Carlson cannot even meet a highly generous standard requiring nothing more than a "belief" that service does not comply with the policies of the Act, continuing with this complaint risks a substantial waste of the time and effort of both the Commission and the Postal Service.

In this regard, the Postal Service must emphasize the rather unique nature of what Mr. Carlson is seeking. Unlike the typical litigant, who is seeking a hearing in order to obtain either money damages or a legal order that the defendant conform its

behavior to specified requirements, Mr. Carlson is essentially seeking nothing more than the hearing itself. Mr. Carlson appears to be indifferent to whether or not anyone ultimately determines that holiday postal services fail to conform to the policies of the Act (they "may" or they may not), as long as he succeeds in forcing a hearing on the subject. Most disturbingly, he apparently envisions this proceeding as a device to allow him to obtain through discovery information about holiday operations that he has had little success in obtaining through other means. See, for example, paragraph 30 of the Complaint.

Given the current posture of these matters, the Postal Service must assert its own interests. Without a sound jurisdictional basis, the Postal Service sees no benefits to participating in a proceeding in which discovery burdens are likely to be substantial. The material aspects of the Postal Service's holiday practice have been amply documented in the information attached to the Postal Service's Answer. By examining that material, Mr. Carlson should be able to determine whether he wishes to allege that holiday service does or does not conform to any of the policies of the Act which he believes to be relevant.<sup>3</sup> Unless and until he has done so, the Postal Service perceives little opportunity for useful participation in this docket. The Postal Service respectfully requests that the Commission reconsider its determination not to grant the Postal Service's motion to dismiss in its entirety. And although the Postal Service believes

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<sup>3</sup> Not only would this potentially allow the complaint to meet the subject matter jurisdiction limitations of the Act, but it would also presumably provide a useful framework to focus the scope of hearings. Right now, we have no clear articulation of which are the policies of the Act with which Mr. Carlson believes holiday service might fail to comply, and, more importantly, why he might believe that to be the case.

that the jurisdictional arguments as set forth above are compelling and sufficient to warrant dismissal of the complaint, other matters of potential relevance are also discussed below.

### Other Matters

Another troubling aspect of the statement on page 17 of Order No. 1307 renouncing any current intent to explore service adequacy under section 3661(a) is its potential incongruence with other portions of the Order. For example, at pages 15-16, and later at pages 16-17, the Order discusses whether the Postal Service's policy on holiday service is confusing or deceptive to the public. On page 16, the Order states:

The existing policy may be ambiguous, and possibly confusing to the mailing public. Complainant should be given the opportunity to fully develop a record on this issue.

In a similar vein at pages 16-17:

The Commission would like to determine whether current Postal Service policy is clear, concise, and not deceptive to the mailing public. ... Accurately informing the mailing public of Postal Service policy is important. The failure to accurately inform the public of a policy has the potential to rise to a failure or denial to provide a particular service.

If a Postal Service practice is alleged to have the potential to rise to a failure or denial of service, it is no great stretch to perceive how that theoretically might relate to adequacy and efficiency of service under section 3661(a). It is much more difficult, however, to connect such concerns to an alleged failure to seek an advisory opinion on a change in service. Yet, Order No. 1307 is predicated on the notion that these issues will be explored in the context of a proceeding which does not contemplate consideration of the policies of section 3661(a), and which instead focuses exclusively on the procedural provisions of section 3661(b).



The matter of potential deception of the public regarding the services to be provided on specific holidays, while perhaps theoretically of interest, is not likely to be a substantial issue. Most mailers probably rely on three sources of information. One source is newspapers and other local media, which might include information on postal services within a broader summary of holiday shutdowns and the like. There is no reason to believe that information conveyed in that fashion would be inaccurate. Another potential information source is the schedule on the collection box the mailer is contemplating using. In recent years, that schedule is likely to show a blank in the area indicating holiday collections. Such collection labels are therefore highly unlikely to create overly optimistic expectations that there will be a holiday collection in circumstances when, in fact, there will be none.<sup>4</sup> Lastly, those mailers whose service needs are believed to be more pressing may contact their local post offices for information on local holiday schedules and their service options. The Postal Service is unaware of any basis to believe that a material number of mailers have found

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<sup>4</sup> A significant portion of Mr. Carlson's complaint relates to the matter of holiday eve service, specifically that provided on Christmas Eve and New Year's Eve in 1999. In those instances, it appears that collections may indeed have occurred *in some locations* earlier than the scheduled time posted on the box. It perhaps bears noting, however, that the eves of those holidays in 1999 occurred on Fridays, causing them to represent the opening portions of major holiday weekends in which normal mailing practices could reasonably be expected to come virtually to a standstill. Moreover, even Mr. Carlson does not allege that these deviations from the collection times posted on the boxes occurred without any attempt to notify the public. In any type of situation in which posted collection schedules will not be met, field units are expected to take appropriate steps to communicate that information to the public. How successfully particular field units conveyed that message to potential mailers in specific instances may be a cause for concern to postal management, but such matters clearly fall within the range of temporary and localized service issues placed outside the scope of complaint proceedings by Commission Rule 82.

themselves receiving holiday mail service that was inconsistent with what they had been led to believe by the information made available to the public.

Order No. 1307 also gets somewhat confusing when it claims that the Commission at this point in the proceeding "does not have an adequate record describing the Postal Service policy as to holiday and holiday eve service, and as to whether that policy has recently been changed." Order No. 1307 at 16. One problem inherent in this claim is the implicit assumption that the Postal Service *has* a comprehensive policy on holiday service. Depending on how one views things, that may very well not be the case.<sup>5</sup> The Postal Service has already provided as an attachment to its Answer the Headquarters memos that set forth the actual field practices expected to be implemented on each specific holiday in 1999. Other than perhaps more recent versions of similar memos, the Postal Service is not aware that it has anything more to offer to describe holiday service levels from a "policy" perspective. Exactly what type of additional information would add to the description of "the Postal Service policy as to holiday and holiday eve service" is unclear.<sup>6</sup>

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<sup>5</sup> For example, the policy on Sunday service was established quite explicitly in the 1988 memo to the field that precluded routine collection and processing of outgoing mail on Sundays. In contrast, there is not (and has not been) a policy either that such services will routinely be made available on every holiday, or that such services will never be routinely provided on any holiday. In this sense, there is no clear articulation of a comprehensive holiday policy because there is no comprehensive holiday policy.

<sup>6</sup> On page 17, the Order indicates an interest in the decision making criteria, and the levels at which decisions are implemented. In fact, that information, to the extent it exists, is already presented in those memos. For example, the memos indicate instances in which determinations must be approved by area vice presidents, and other instances in which local offices make their own determinations. Decision making criteria for collections include guarding against possible box overflow situations, and for mail processing include consideration of mail volume levels from the same period in

On the other hand, from another perspective, one could argue that a holiday service "policy" actually can be discerned from those memos. Of course, there would be little need for a separate holiday "policy" if it were simply business-as-usual on holidays. One of the primary intents of the memos, therefore, is to guide the field to use fewer resources than would be the case during normal operations. Yet each memo also includes a caution to the effect that offices should conduct holiday operations to ensure that the service needs of their communities are attained with no service disruptions. Thus, if one were trying to articulate a Postal Service's "policy" on the level of holiday operations, perhaps the most reasonable candidate would be a statement to the effect that the policy is to provide neither too much nor too little service. In that case, the suggestion in Order No. 1307 that an adequate record does not yet exist to describe the Postal Service's holiday service "policy" does not appear to be well founded.

Moreover, although the Postal Service does not purport to suggest that its practices with regard to holiday service have been consciously set with the policies of section 3661(a) specifically in mind, we submit that there is very substantial consistency between the two. As discussed in greater detail at pages 9-10 of the Postal Service's December 22nd Reply to the Opposition to the Motion to Dismiss, the Postal Service is trying to guide the field to select holiday service levels that are both "adequate" and "efficient." The obvious overlap between the intent of the Postal Service's holiday

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previous years. To the extent that more specific elements of the process used in the field for any particular holiday are not identified in the memo distributed for that holiday, more details on such matters would hardly shed light on any comprehensive "policy" with regard to holiday service.

practices and the policies of the Act underscores the rationality of the Postal Service's unwillingness to embark on the quixotic undertaking which this proceeding represents.

Conclusion

As stated above, the Postal Service submits that no adequate basis currently exists to support jurisdiction to continue this proceeding under section 3662. What Mr. Carlson truly intends appears to be a far-flung exploration of a variety of issues relating to holiday service that interest him. Section 3662 does not exist to provide a forum for such efforts. The Postal Service requests that the Commission reconsider the position stated in Order No. 1307, and dismiss the complaint in its entirety.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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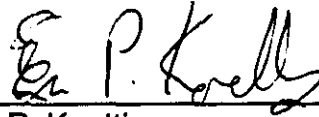
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## CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon:

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A handwritten signature in black ink, appearing to read "Eric P. Koetting", written over a horizontal line.

Eric P. Koetting

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